IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 3935 of 2006()

SC.241/2005 of ADDL. SESSIONS COURT (ADHOC), PATHANAMTHITTA

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PETITIONER:

ANNAKUTTY,
MOOLACHALIL VEEDU, KUMARAMPEROOR VADAKKEKARA MURI,
VADASSERIKKARA VILLAGE, PATHANAMTHITTA.

BY ADV. SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3935 of 2006

Dated this the 30th day of November 2006

O R D E R

The petitioner is the witness in a prosecution under Section 8 of the Abkari Act. It is the case of the prosecution that a document was seized in the course of the investigation and the same was handed over to the petitioner on a kychit by the investigator. When the petitioner appeared before the court, she did not produce the document. She denied having received the original of the document on a kychit. The court, in these circumstances, evidently had decided to formally probe into the matter further. A formal notice of demand, calling upon the petitioner to produce the document executed by one Mohanan, handed over to the petitioner on 22/7/1999 under kychit was directed to be produced. The petitioner has rushed to this court with this Crl.M.C. She prays that the order passed (which is produced as Annexure 1) may be set aside.

2. What is the reason? The learned counsel for the petitioner submits that the petitioner, when she was examined as a witness had stated on oath that the document has not been handed over to her. The case of the prosecution is that the document has been handed over to her. The learned Magistrate in these circumstances was duty

bound to enquire whether there is wilful default on the part of the petitioner in not producing the original document, which was allegedly entrusted to her by the police, in the course of investigation. A formal demand must in these circumstances be made to the petitioner to produce the document. That is exactly what the court was done by issue of Annexure 1 notice. If it is the case of the petitioner that no document has been entrusted to her, she can appear before the learned Magistrate and file a statement asserting that no such document has been entrusted to her. No court will be justified in naively leaving the matter there. The matter will have to be enquired into. It will have to be ascertained whether police is speaking the truth or falsehood about the alleged handing over of the document to the petitioner. It will have to be ascertained whether the petitioner is speaking falsehoold or not. Once that controversy is resolved, the learned Magistrate may have to proceed to take the appropriate lawful action, which is necessary in the circumstances. At any rate, I find no merit in the challenge raised against Annexure 1. No person can afford to take the stand that the learned Magistrate must have left the matter there and should not have worried about the original document, merely because the petitioner denied having received the original document or denied and disputed her signature

in the kychit. I am unable to agree that the court below has committed any such indiscretion in issuing Annexure 1 notice, which would justify invocation of jurisdiction under Section 482 Cr.P.C.

3. I may clarify and state that the petitioner can appear before the learned Magistrate as directed in Annexure 1. If the document is available with her, she can produce it. If it is not available with her, she can file a statement to apprise the court of her version of the alleged handing over of the document. The learned Magistrate, needless to say, will have to proceed further and ascertain the truth and thereafter take such appropriate action as the circumstances warrant.

4. In the result, this Crl.M.C.is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006